IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

S.B.CRIMINAL MISC. PETITION NO. 977/2004
(Bheru Lal V/s Jamni Devi & Anr.)

Date of Order : 28/08/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. S.P.Sharma, for the petitioner.
Mr. Ashok Upadhyay, public prosecutor.
Mr. Sandeep Mehta with Mr. Dharmendra Surana for the non-petitioner No.1.

BY THE COURT:-

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioner has challenged the order dated 24.4.2004 passed by learned Sessions Judge, Bhilwara (for short 'the revisional court' hereinafter) whereby the revision petition filed by the petitioner against the order dated 05.10.1999 passed by Judicial Magistrate First Class No.1, Bhilwara (for short 'the trial court' hereinafter), was dismissed being barred by period of limitation.

I have heard learned counsel for the parties. Carefully gone through the order passed by the trial court as also record of the trial court.

On an application filed by the non-petitioner No.1 under Section 125 Cr.P.C., the trial court vide order dated 05.10.1999 granted monthly allowance of maintenance @ Rs. 400/- in favour of the non-petitioner and against the petitioner from the date of application i.e. 03.1.1994.

It is contended by learned counsel for the petitioner that the marriage of the non-petitioner with the petitioner has not been established and therefore, the trial court fell in error in granting monthly allowance of maintenance in favour of the non-petitioner.

I have carefully gone through the pleadings of the parties as also statements of witnesses AW-1 Jumni, AW-2 Kana and AW-3 Lahri produced by the non-petitioner before the trial court. The petitioner, despite opportunity, failed to lead any evidence before the trial court. The evidence produced by the non-petitioner remained uncontroverted. All the three witnesses categorically stated that the marriage of the non-petitioner was solemnized with the petitioner. This fact has not been controverted. Relying on the evidence produced by the non-petitioner, the trial court granted maintenance.

On careful scrutiny of the statements of witnesses, in my view, there is un-rebutted evidence of the non-petitioner that the non-petitioner married to the petitioner Bheru Lal. In the

circumstances, therefore, the contention raised by the counsel for the petitioner deserves to be rejected.

So far as granting maintenance @ Rs.400/- per month is concerned, all the witnesses stated that the petitioner is serving in the Army and drawing salary of Rs.4500 to 5000/- per month. In the circumstances, therefore, granting monthly allowance of maintenance @ Rs. 400/- cannot be said to be excessive. It cannot be said that the order impugned would result in serious miscarriage of justice or abuse of process of any Court.

The petition has no force and is therefore, dismissed. Stay petition also stands dismissed.

(H.R.PANWAR),J.

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